

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

HOLLY GREEN,

Plaintiff,

v.

Case No. 2:19-cv-556-NPM

DR. KELLY MALINOSKI, LLC and
KELLY MALINOSKI,

Defendants.

ORDER

In this Fair Labor Standards Act case, the parties have filed a Joint Stipulation for Dismissal with Prejudice (Doc. 35). Federal Rule of Civil Procedure 41(a)(1)(A)(ii) allows a plaintiff to dismiss an action voluntarily if a stipulation of dismissal is signed by all parties who have appeared. The dismissal is effective upon filing and requires no further action by the Court. *See Anago Franchising, Inc. v. Shaz, LLC*, 677 F.3d 1272, 1278 (11th Cir. 2012). The text of the FLSA does not provide, and no Eleventh Circuit decision has ever held, that FLSA claims are exempt from Rule 41. To the contrary, the Eleventh Circuit has reasoned that the Federal Rules of Civil Procedure apply “in actions brought under the Fair Labor Standards Act no less than in any other case.” *Vasconcelo v. Miami Auto Max, Inc.*, 981 F.3d 934, 942 (11th Cir. 2020) (holding that Rule 68’s cost-shifting provisions

trump the FLSA’s cost-shifting provisions). And there is “no distinction” between the operation of Rule 41(a)(1)(A)(ii) and Rule 68 in an FLSA action. *See Casso-Lopez v. Beach Time Rental Suncoast, LLC*, 335 F.R.D. 458, 461-462 (M.D. Fla. 2020) (Merryday, C.J.) (holding parties may terminate an FLSA case by filing either a Rule 41(a)(1)(A)(ii) stipulation of dismissal with prejudice or a Rule 68(a) notice of acceptance of an offer of judgment “and the district court is immediately powerless to interfere”); *see also Dicom v. KJIMS Dev. Co., Inc.*, No. 2:16-CV-327-FTM-99CM, 2016 WL 6678420 (M.D. Fla. Nov. 14, 2016) (Steele, J.) (“the parties may dismiss [an FLSA] case in its entirety pursuant to the Joint Stipulation for Dismissal With Prejudice without further action from the Court as it is unconditional and self-executing) (citing *Anago*).

Here, the parties stipulate to dismissing this case with prejudice and with each side to bear its own costs and fees associated with the non-FLSA claims. Accordingly, this action is dismissed with prejudice. The Clerk is directed to enter judgment.

DONE and **ORDERED** in Fort Myers, Florida on May 5, 2021.



NICHOLAS P. MIZELL
UNITED STATES MAGISTRATE JUDGE